N.D.A.G. Letter to Wogsland (March 21, 1989)

March 21, 1989

Honorable Dan Wogsland
North Dakota State Senate
State Capitol
Bismarck. ND 58505

Dear Senator Wogsland:

Thank you for your March 17, 1989, letter concerning the status of cemetery tax levies following the enactment of House Bill No. 1251. This bill was successfully enacted during the 1989 Legislative Session and was filed with the Secretary of State's office on March 15, 1989. House Bill No. 1251 will, therefore, take effect on July 1, 1989.

House Bill No. 1251 adds one sentence to N.D.C.C. § 57-15-27.1. That particular sentence reads as follows:

> In addition to all levies now authorized by law, organized townships may levy a tax not exceeding one-fourth of one mill on the dollar of taxable valuation of property in the township for the care, maintenance, and improvement of established cemeteries maintained but not owned by the township.

Your first question is whether this particular sentence allows a township to levy the one-fourth mill for the care, maintenance, and improvement of an established cemetery which is <u>not</u> maintained by a township. The above-quoted language refers only to cemeteries maintained but not owned by the township. It would not be applicable to cemeteries not maintained by the township. Thus, the provision of House Bill No. 1251 would not permit the use of a one-fourth of one mill levy for the maintenance of cemeteries which are not being maintained by a township.

Your second question is whether the provisions of this bill obligate township boards to maintain a cemetery despite their desire not to maintain unowned cemeteries. The above quoted language is permissive in nature. It states: "organized townships <u>may</u> levy . . . ." (Emphasis supplied.) It permits the tax to be used by a township in the maintenance of cemeteries it maintains but does not own. It does not require the levy of this tax. Thus, House Bill No. 1251 creates no obligation to levy the tax to maintain cemeteries the township does not wish to maintain.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth
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